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Attorneys for Plaintiff
McKESSON CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware
corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Connecticut corporation,

Defendant.

FAMILYMEDS GROUP, INC.,
f/k/a Drugmax, Inc., a Connecticut corporation,

Counterclaimant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Counterdefendant.

FAMILYMEDS, INC.,
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware
corporation,

Cross-Defendant.

Case No.4:07-cv-05715 WDB

**DECLARATION OF MARIA K. PUM IN
SUPPORT OF AMENDED MOTION OF
McKESSON CORPORATION SEEKING
TO DISMISS:**

**(1) COUNTERCLAIM FOR SPECIFIC
PERFORMANCE OF CONTRACT
AND ACCOUNTING; AND**

**(2) CROSS-COMPLAINT FOR
ACCOUNTING**

Complaint Filed: November 9, 2007
Cross-Complaint Filed: December 17, 2007

Date: March 12, 2008
Time: 3:00 pm
Place: Ctrm 4
1301 Clay St., 3d Floor
Oakland, CA

1 I, MARIA K. PUM, declare that I have personal knowledge of the following facts and, if
2 called upon to do so, I could and would testify competently thereto:

3 1. I am a partner at the law firm of Henderson & Caverly LLP, counsel for plaintiff
4 McKESSON CORPORATION ("McKesson") in this action.

5 2. On November 9, 2007, I caused to be filed the complaint commencing this action
6 which is entitled "Complaint for Breach of Contract." It contains a single cause of action and
7 names a single defendant: FAMILYMEDS GROUP, INC., f/k/a Drugmax, Inc. ("Familymeds
8 Group").

9 3. On or about December 17, 2007, I received as counsel for McKesson service of not
10 only an answer to the Complaint, but also with a pleading entitled "Counterclaim for Specific
11 Performance of Contract and Accounting; Cross-Complaint for Accounting" (the "Cross-
12 Complaint & Counterclaim"). I have read the Cross-Complaint & Counterclaim and know of my
13 own knowledge that:

14 a. The Cross-Complaint & Counterclaim names Familymeds, Inc. as the "Cross-
15 Complainant" filing the Cross-Complaint & Counterclaim against McKesson.

16 b. According to paragraph 4 of the Cross-Complaint & Counterclaim, Familymeds,
17 Inc. "is the wholly owned subsidiary of Familymeds Group."

18 c. Nowhere in the Cross-Complaint & Counterclaim is any allegation made by
19 Familymeds Group that Familymeds, Inc. (the party proposed to be added by Familymeds Group to
20 this action) is a person who is or may be liable to Familymeds Group for all or a part of
21 McKesson's claim against Familymeds Group.

22 d. Although it is a bit unclear, my reading of the Cross-Complaint &
23 Counterclaim, specifically paragraph 11 of the Cross-Complaint & Counterclaim, indicates that
24 Familymeds Group and/or Familymeds, Inc. is asserting claims against McKesson in the Cross-
25 Complaint & Counterclaim based on a December 28, 2004 contract between Familymeds, Inc.,
26 Valley Drug Company and D&K, which is defined in the Cross-Complaint & Counterclaim as the
27 "First Agreement." The Cross-Complaint & Counterclaim does not allege that McKesson is a
28

1 party to the First Agreement.

2 e. The Cross-Complaint & Counterclaim does not name D&K as a party in the
3 Cross-Complaint & Counterclaim even though D&K is the counter-party to the so-called First
4 Agreement and the Cross-Complaint & Counterclaim seeks remedies based on the First
5 Agreement.

6 f. The Cross-Complaint & Counterclaim defines the agreement that is the subject
7 of the original Complaint as the "Second Agreement."

8 4. D&K continues to exist as a separate corporate entity.

9 5. The so-called "First Agreement" is not a subject of the Complaint. The allegations
10 of the Complaint are confined to breaches relating solely to a contract entitled "Supply Agreement"
11 which was dated February 2, 2007 and executed by Familymeds Group and McKesson and no
12 other parties. This contract is defined in the Cross-Complaint & Counterclaim as the "Second
13 Agreement."

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct. Executed this 14th day of January, 2008.

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18 MARIA K. PUM
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1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego, California. I am over the age of 18 years and
3 not a party to the within action. My business address is Henderson & Caverly LLP, P.O. Box
4 9144, 16236 San Dieguito Road, Suite 4-13, Rancho Santa Fe, California 92067.

5 On January 14, 2008, I served the foregoing:

6 **DECLARATION OF MARIA K. PUM IN SUPPORT OF AMENDED MOTION OF
7 McKESSON CORPORATION SEEKING TO DISMISS:**

8 **(1) COUNTERCLAIM FOR SPECIFIC PERFORMANCE OF CONTRACT AND
ACCOUNTING; AND**

9 **(2) CROSS-COMPLAINT FOR ACCOUNTING**

10 on the following parties in this action in the manner set forth below:

11 Robert C. Gebhardt, Esq.
12 Jeffer, Mangels, Butler & Marmaro LLP
13 Two Embarcadero Center, Fifth Floor
San Francisco, California 94111-3824

14 ☐ (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-
15 class mail, for collection and mailing at Henderson & Caverly LLP, Rancho Santa Fe,
16 California, following ordinary business practices. I am familiar with the practice of
Henderson & Caverly LLP for collection and processing of correspondence, said practice
being that in the ordinary course of business, correspondence is deposited in the United
States Postal service the same day as it is placed for collection.

17 ☒ (BY EMAIL) I electronically filed such document using the ("CM/ECF") system which will
18 send a Notice Of Electronic Filing to CM/ECF participants.

19 ☐ (BY FACSIMILE) I transmitted the above-listed document to the party listed above via
20 facsimile. The transmission was reported complete and without error. The telephone
21 number of the facsimile machine I used was (858) 756-4732.

22 I declare that I am employed in the office of a member of the bar of this court at whose
23 direction the service was made.

24 Executed at Rancho Santa Fe, California on January 14, 2008.

25 
26 Quynh N. Nguyen
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